

### 3.1 SCOPE

All work performed on *public buildings or facilities* (see **definition**), including *construction, reconstruction, alterations, remodeling, additions, and changes of use* shall conform to 521 CMR.

- 3.1.1 To determine the scope of compliance, refer to **521 CMR 3.2, New Construction** and **521 CMR 3.3, Existing Buildings**. In the absence of jurisdiction by 521 CMR, 780 CMR: the State Building Code may apply.

### 3.2 NEW CONSTRUCTION

All new *construction of public buildings* shall comply fully with 521 CMR.

### 3.3 EXISTING BUILDINGS

All *additions to, reconstruction, remodeling, and alterations or repairs* of existing *public buildings or facilities*, which require a *building* permit or which are so defined by a state or local inspector, shall be governed by all applicable subsections in **521 CMR 3, JURISDICTION**.

For specific applicability of 521 CMR to existing *multiple dwellings* undergoing *renovations*, see **521 CMR 9.2.1**.

- 3.3.1 If the work being performed amounts to less than 30% of the *full and fair cash value* of the *building* and

- a. if the work costs less than \$100,000, then only the work being performed is required to comply with 521 CMR

or

- b. if the work costs \$100,000 or more, then the work being performed is required to comply with 521 CMR. In addition, an *accessible public entrance* and an *accessible* toilet room, telephone, drinking fountain (if toilets, telephones and drinking fountains are provided) shall also be provided in compliance with 521 CMR.

Exception: General maintenance and on-going upkeep of existing, underground transit *facilities* will not trigger the requirement for an *accessible entrance* and toilet unless the cost of the work exceeds \$500,000 or unless work is being performed on the *entrance* or toilet.

Exception: Whether performed alone or in combination with each other, the following types of *alterations* are not subject to **521 CMR 3.3.1**. (When performing exempted work, a memo stating the exempted work and its costs must be filed with the permit application or a separate *building* permit must be obtained.)

- a. Curb Cuts: The *construction* of *curb cuts* shall comply with **521 CMR 21**.
- b. *Alteration* work which is limited solely to electrical mechanical, or plumbing systems; to abatement of hazardous materials; to retrofit of automatic sprinklers **and** does not involve the *alteration* of any *elements* or *spaces* required to be *accessible* under 521 CMR. Where electrical outlets and controls are altered, they must comply with 521 CMR.
- c. Roof *repair* or replacement, window *repair* or replacement, repointing and masonry *repair* work.
- d. Work relating to septic system *repairs*, (including Title V, 310 CMR 15.00, improvements) site utilities and landscaping.

- 3.3.2 If the work performed amounts to 30% or more of the *full and fair cash value* of the *building* the entire *building* is required to comply with 521 CMR.

- a. Where the cost of constructing an *addition* to a *building* amounts to 30% or more of the *full and fair cash value* of the existing *building*, both the *addition* and the existing *building* must

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be fully *accessible*.

- 3.3.3 Tenant vs. owner of *building*: *Alterations* by a tenant do not trigger the requirements of **521 CMR 3.3.1.b. and 3.3.2** for other tenants. However, *alterations, reconstruction, remodeling, repairs, construction, and changes in use* falling within **521 CMR 3.3.1b** and **3.3.2**, will trigger compliance with **521 CMR** in areas of *public use* for the owner of the *building*.
- 3.3.4 No *alteration* shall be undertaken which decreases or has the effect of decreasing accessibility or usability of a *building* or *facility* below the requirements for new *construction*.
- 3.3.5 If *alterations* of single *elements*, when considered together, amount to an *alteration* of a room or *space* in a *building* or *facility*, that *space* shall be made *accessible*.
- 3.3.6 No *alteration* of an existing *element*, *space*, or area of a *building* or *facility* shall impose a requirement for greater accessibility than that which would be required for new *construction*.

**3.4 CHANGE IN USE**

When the use of a *building* changes from a private use to one that is open to and used by the public, an *accessible entrance* must be provided, even if no work is being performed. When a portion of a *building* changes use from a private use to one that is open to and used by the public, then an *accessible route* must be provided from an *accessible entrance* even if no work is being performed.

- 3.4.1 RESERVED FOR FUTURE ACTION: *Changes in use*, from private to public, in private residential homes where no work is being performed.

**3.5 WORK PERFORMED OVER TIME**

When the work performed on a *building* is divided into separate phases or *projects* or is under separate *building* permits, the total cost of such work in any 36 month period shall be added together in applying **521 CMR 3.3, Existing Buildings**.

**3.6 MULTIPLE USES**

When a *building* is occupied by two or more uses, the Regulations which apply to each use shall apply to such parts of the *building* within that *use*.

- 3.6.1 **521 CMR 3.3, Existing Buildings** shall apply based upon each *use* and not on the entire *building*.

Example: If a three story *building* valued at \$300,000 has one floor of retail *use* and two floors of residential *use*, the *full and fair cash value* of the retail portion shall be \_ of the total value which would be \$100,000.

**3.7 PARTIAL APPLICATION**

When only a portion of a *building* is subject to 521 CMR, the *full and fair cash value* shall be prorated by the ratio of the square footage of that portion to the square footage of the whole *building*.

Example: Where the whole *building* is 100,000 square feet, the *full and fair cash value* is \$1,000,000, and the part subject to 521 CMR is 10,000 square feet (one-tenth of the total), then the *full and fair cash value* of the part subject to 521 CMR would be one-tenth of \$1,000,000 or \$100,000.

- 3.7.1 If the *Board* determines that such proration would cause an inequitable result, the *Board* may otherwise calculate the *full and fair cash value* of the portion of the *building*.

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**3.8 OUTDOOR FACILITIES**

For *facilities* where the *primary function areas* are outdoors, including but not limited to beaches, parks, picnic areas, playgrounds, and campsites, the *full and fair cash value* shall include the value of the land as well as any *buildings* or *facilities* on the land.

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**3.9 HISTORIC BUILDINGS**

An historic *building* or *facility* that is listed or is eligible for listing in the National or State Register of Historic Places or is designated as historic under appropriate state or local laws may be granted a *variance* by the *Board* to allow alternate accessibility. If a variance is requested on the basis of historical significance, then consultation with the Massachusetts Historical Commission is required in order to determine whether a *building* or *facility* is eligible for listing or listed in the National or State Register of Historic Places. The Massachusetts Historical Commission may request a copy of the proposed variance request and supporting documentation to substantiate the variance request and its effect on historic resources. A written statement from the Massachusetts Historical Commission is required with the application for variance.

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**3.10 TEMPORARY STRUCTURES**

Temporary *buildings* or *facilities*, including but not limited to reviewing stands, temporary classrooms, bleacher areas, exhibit areas, temporary banking *facilities*, temporary health screening services, or temporary pedestrian passageways around a *construction site*, shall comply with 521 CMR. Structures, *sites* and equipment directly associated with the actual processes of *construction*, such as scaffolding, bridging, materials hoists, or *construction* trailers, need not apply.

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**3.11 SECURITY STRUCTURES**

Accessibility is not required to observation galleries used primarily for security purposes.

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**3.12 NON-OCCUPIABLE SPACES**

Spaces accessed only by ladders, catwalks, crawl spaces, or freight (non-passenger) elevators, and frequented only by service personnel for *repair* purposes, are exempt. Such spaces may include, but are not limited to, elevator pits, elevator penthouses, piping or equipment catwalks.

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